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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 475

DAN PAUL,
Petitioner,

vs.

DADE COUNTY, FLORIDA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Dan Paul ("Petitioner") petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida entered in this case May 8, 1968. Petitioner's petition for rehearing was denied on June 6, 1968.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (Appendix, *infra*, pp. A1-A26; R. 6-33) is reported at 210 So. 2d 200. The opinion and decree of the Dade County Circuit Court (Appendix, *infra*, pp. A29-A41; R. Vol. II, 216-218, 223-232) is unreported.

JURISDICTION

The judgment of the Supreme Court of Florida was filed on May 8, 1968 and that Court denied Petitioner's petition for rehearing by Order entered on June 6, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3), since rights guaranteed under the United States Constitution have been denied petitioner.

QUESTION PRESENTED

The sole question presented to this Court is:

Whether a governmental agency denies due process and equal protection of the laws by affording a tax exemption to a favored private corporation and agreeing to pay from other public funds all taxes levied against that corporation (which corporation also is granted the cloak of that agency's character so as to secure a lower interest rate on its construction financing) when the effect of that tax exemption and indemnity is to increase the tax burden on the remaining taxpayers.

CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provision involved is that portion of Section 1 of the Fourteenth Amendment to the Constitution of the United States which provides:

> "No state shall * * * deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

STATEMENT OF THE CASE

In 1967 National Airlines, Inc. (National) and the Dade County Port Authority (Authority) agreed to construct $32,359,000 of new facilities for National's exclusive

use at Miami International Airport (R. Vol. I, 85-89, Vol. II, 337-387) through issuance and sale by Authority of Special Revenue Bonds (R. Vol. I, 3, 106-107). The new facilities were to be leased to National for its sole use, and included a maintenance apron, an in-flight kitchen, two multi-level parking garages for National employees, a hangar, a utilities center, a four-story addition to National's office building, an enlargement of its simulator building for training its employees, and a cafeteria for National's employees (R. Vol. I, 137). National has complete control over these facilities, as is shown by the recitation of facts (undisputed by the majority) set forth in the dissenting opinion below (Appendix, *infra*, pp. A10-A14; R. 15-18).

All the facilities are to be tax-exempt for the term of the lease. In order to insure National its purported tax exemption Authority agreed to pay for National any taxes which might be levied against the new facilities (R. Vol. I, 131-132). The key provision in the agreement between Authority and National provides:

> "It is expressly understood and agreed that the Authority shall, if not prohibited by law, assume and pay *all taxes and improvement charges of any nature whatsoever* which may be levied and assessed against the New Facilities, or the leasehold interest of National therein." (Emphasis added).

The validation of Authority's bonds was challenged in the Dade County, Florida Circuit Court by the State Attorney for the Eleventh Judicial Circuit of Florida (Dade County) and by Dan Paul as property owner, tax payer and citizen of Dade County. The Dade County Circuit Court validated the bonds (Appendix, *infra*, pp. A29-A41; R. Vol. II, 216-218, 223-232). Both challengers appealed this decree to the Supreme Court of Florida (R. 1-5) which

affirmed on May 8, 1968 with three of the seven justices dissenting (Appendix, *infra*, pp. A1-A26; R. 6-33). Petitioner's Petition for Rehearing was denied on June 6, 1968 (R. 38).

HOW FEDERAL QUESTION IS PRESENTED

The Petition for Validation requested the Circuit Court to issue a decree validating the bonds to be issued and the proceedings taken in connection therewith, "including the Lease Agreement, the Supplemental Agreement and the Resolution" (R. Vol. I, 10). Petitioner's answer claimed, *inter alia*, that the provision of the lease exempting National from taxes and other charges on the facilities and agreeing to pay all taxes which might be levied against National while requiring Petitioner and others in the county to pay such taxes, constituted a violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution (R. Vol. II, 221). The Circuit Court concluded as a matter of law that all terms of the lease arrangement were valid and the bonds could legally be issued to fund National's facilities (Appendix, *infra*, pp. A29-A41; R. Vol. II, 216-218, 223-232). These constitutional issues were again specifically raised by Petitioner in the subsequent direct appeal to the Supreme Court of Florida (R. Vol. III, 423). The Supreme Court of Florida found that "the financing as shown here is consistent with the law of this State and in no way is it inconsistent with the Constitution of the State of Florida or the United States" (Appendix, *infra*, p. A6; R. 11). Petitioner again raised these issues in his Petition for Rehearing (R. 34-37), which was denied.

REASONS FOR GRANTING THE WRIT

The decision of the Supreme Court of Florida (no opinion having been concurred in by a majority of that court) sanctions the use by government of the property tax so as to discriminate against the urban resident—and particularly the low-income central city resident—for the benefit of certain favored business interests. The decision denies equal protection to exactly those urban residents who most need that protection.[1] The dissenting opinion in the Supreme Court of Florida concluded that this governmental action violated the equal protection clause of the Fourteenth Amendment to the United States Constitution. The majority of four justices disagreed.

The Supreme Court of Florida here has held that the financing by Authority of private facilities for National was for a "public purpose" within the contemplation of Section 10, Article IX of the Florida Constitution. This decision is not contested by this Petition. However, the determination of "public purpose" for validity of bond financing under the Florida Constitution has no relevance to the issue posed by this Petition as to whether the equal protection clause permits government to exempt from (or indemnify against) taxes certain favored property at the expense of other property not so favored. *Wayland* v. *Snapp*, 232 Ark. 57, 78, 334 S.W.2d 633, 644 (1960) (dissenting opinion); *Public Industrial Financing*, 111 U. PA. L. REV. 265, 319-323 (1963).

This Court has held that the equal protection clause prohibits discrimination through state taxation. *Wheeling Steel Corporation* v. *Glander*, 337 U.S. 562 (1949); Newhouse, *Constitutional Uniformity and Equality in*

1. Even where fairly applied, the property tax has always been criticized for its regressive nature—"That is, the tax as a percentage of the income of those who bear the ultimate burden declines as income rises". Netzer, *Economics of the Property Tax* (Brookings Institution, 1966), pp. 5, 46-47, 53-55.

State Taxation (Michigan Legal Studies 1959), pp. 601-608. Although this Court has given a certain license to state taxing authorities to make the impact of property taxes unequal through rational classifications, we are concerned here with an arbitrary and capricious attempt to exempt one private corporation from payment of any taxes whatsoever. It is clear that under the best of circumstances, the "increasing burden of municipal taxes frequently falls upon that part of the urban population least able to pay them." *Report of the National Advisory Commission on Civil Disorders* (1968), p. 393. But, here, by governmental fiat, one private corporation is freed of any burden of taxation whatsoever, and nevertheless receives the benefits of municipal services at the expense of the remainder of the community, including those already disadvantaged under the best of circumstances.

Recent studies of the property tax have shown that this tax has its highest impact on residential property in the low-income center city and has an additional impact of preventing new building in and refurbishing of ghetto areas. See, generally, Netzer, *Economics of the Property Tax* (Brookings Institution, 1966) and, as to the effect on urban areas, Netzer, *Impact of the Property Tax* (prepared for and printed by the National Commission on Urban Problems (1968)). This impact is heavy on owner-occupied residences, yet heavier on the renter. The vast majority of low-income occupants of center city properties rent their living quarters and the property tax is passed through by the owner to the occupant through increased rentals. Netzer, *Impact*, p. 22.[2]

2. Florida affords a special property tax exemption to owner-occupants of residential property—a $5,000 "homestead exemption." Fla. Stats. §192.12. This exemption is not available to either lessor or lessee of rented residential property. The bulk of low-income center city residents, being renters, thus do not receive the benefit of this exemption. The non-availability of the homestead exemption is a compounding factor in considering the effect of granting a favored private corporation an exemption from (or indemnification against) taxation.

Netzer concludes that consumers "via their rents" pay in taxes amounts which are "very sizeable increments to their housing costs". *Id.* at p. 24. The effect of the property tax on living standards and conditions in the urban area is substantial.

> "First, taxes raise the cost of housing to the occupants and simply put a significant part of the existing housing stock beyond the reach of many in the low-income population. For example, take a large urban family with an income of $4,000. The maximum tolerable rent for such a family (if the rent is not paid by public assistance) might be said to be 30 percent of income or $100 a month. Assume that the prevailing level of property taxes is 25 percent of rents in that city. Were property taxes on housing eliminated this family could afford to rent an apartment now renting for $133 a month, without exceeding 30 percent rent/income ratio, an apartment which is now out of reach.
>
> "There is yet another aspect to all this. Most low-income families do spend large proportions of their incomes for housing, but not all of them do so. In the 1960 Census, there were 3.8 million renter households with incomes below $3,000 for whom rent/income ratios were computed. Roughly 600,000 of these spent less than 25 percent of their incomes for housing. Now it is a worthy objective to attempt to persuade some of these families to moderately increase the proportions of income spent for housing, by offering them greatly improved housing conditions at small increases in rent. A reduction in the property tax burden could do just that, by reducing the prices of housing across-the-board. To return to the $4,000 urban family, assume a present rent/income ratio of 20 percent, which means a monthly rent of $67. A 50 percent reduction in property taxes, combined with an increase in rent/income ratio to 25 percent, would

> permit this family to rent an apartment which now rents for $97 a month, a 45 percent improvement in housing conditions (presumably) with a one-fourth increase in actual rental payments." *Id.* at pp. 26, 28.

In addition, the property tax deters improvements in the central city housing supply. *Id.* at p. 28. In sum, the "deterrent effects of high taxes on consumption of, and investment in, housing in large central cities are serious." *Id.* at p. 39.

The exemption (or indemnification) here involved must have the effect of increasing the level of taxation to all users of the residential housing supply and to all other taxpayers. Municipal services are principally provided from property tax revenue.[3] The exemption afforded favored industry in this case must place Dade County, at least in part, in the position of taxing the poor to provide free services to the rich, which is surely anomalous.

In addition, the granting of a tax exemption to one favored corporation denies equal protection to non-favored businesses. It would seem obvious that:

> "There is no reason to believe that industrial lessees [who have received industrial revenue bond financing—such as National here] need the indirect subsidy of tax exemption any more than do manufacturers who construct new plant facilities with private financing. Quite to the contrary, the manufacturer who with great difficulty obtains private financing at high interest rates may have the greater need of tax relief. It is also possible that the economic benefits to the community derived from his activity may be greater than those realized from lessees of municipal facilities." *Public Industrial Financing, supra,* at page 321.

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3. Local education receives over 50% of the local property tax revenue. About 55% of all school current expenditures and almost 50% of all other local governmental expenditures are financed from the property tax. Netzer, *Economics, supra,* at p. 10. Dade County's experience parallels these national averages.

Industrial financing has been rather universally condemned. Abbey, *Municipal Industrial Development Bonds*, 19 VAND. L. REV. 25 (1965); *The Proliferation of Industrial Revenue Bond Financing: Ban the Bond?* 41 TEMP. L.Q. 289 (1968). Its economic value is nil. Its burden on the non-favored groups is great. However, the issue of industrial financing is not presented by this Petition. The sole question presented here is whether government may free one private corporation, which is to be the recipient of free municipal services, from the general taxation which supplies the revenues to provide those services. On this question the dissenting opinion in the Supreme Court of Florida adopted in full the following statement from *Smith* v. *State*, 222 Ga. 552, 150 S.E. 2d 868 (1966):

> " 'The discrimination in taxation which the Equal Protection clauses forbid is the failure of the taxing authorities to tax all like property which is subject to taxation equally or tax the property of one owner and exempt like property belonging to another owner' * * * the exemption of private industry from taxes while requiring plaintiff and other private industry in the county to pay said taxes would constitute taking of the property of plaintiffs and other taxpayers of Telfair County who are engaged in private business, without due process of law and would deny them equal protection of the law in violation of the federal Constitution. Thus, the constitutional amendment * * * is in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States." See Appendix, *infra*, p. A26; R. 32-33.

See also, *Village of Moyie Springs* v. *Aurora Manufacturing Company*, 82 Idaho 337, 353 P.2d 767 (1960). We submit that the quoted passage is a correct statement of the mandate of the Fourteenth Amendment and its rejection by the majority of the court below was serious error.

CONCLUSION

Petitioner submits that for the foregoing reasons this pressing issue should be reviewed by this Court and therefore this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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